IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 569 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SUBHASHCHANDRA MAHAJAN - Applicant(s)

Versus

STATE OF GUJARAT - Respondent(s)

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Appearance :
MR YOGESH S LAKHANI for Applicant(s) : 1,
MR. H.M.PRACHHAK, APP for Respondent(s) : 1,
MR NIGAM R SHUKLA for Respondent(s) : 1,
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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

Date : 26/09/2005

ORAL JUDGMENT

1.**RULE**. Mr. H.M.Prachhak, learned APP appears and waives service of notice of Rule on behalf of respondent no.1-State of Gujarat whereas Mr. Nigam R. Shukla, learned

advocate appears and waives service of notice on behalf of respondent no.2-Central Bureau of Investigation, Gandhinagar.

2. By instant petition under Section 397 read with Section 401 of the Code Criminal Procedure ('the Code' for short), the petitioner/original accused seeks to challenge the order dated 25.4.2005 recorded below application exh.1 in CBI Criminal Misc. Application no. 41 of 2005 by the learned Special Judge, Court No.4 (Special) for CBI Cases at Navrangpura, Ahmedabad, by which the application filed by the petitioner seeking interim custody of muddamal articles mentioned in schedule 1, 2 and 3, i.e. FDR, documents, gold and silver ornaments, during the pendency of the Sessions Case, has been rejected.

3. One FIR came to be lodged vide CR No. I-26A/2004 at CBI Police Station, Ahmedabad, for commission of the alleged offences punishable under Sections 120B, 420, 467, 468 and 471 of the IPC and under Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act ('the Act' for short). The said complaint came to be lodged by the Chief Manager, Punjab National Bank alleging that the petitioner along with others has cheated the Bank and duped the amount of the Bank. The petitioner is working with the Punjab National Bank, Station Road Branch. During the course of investigation, certain ornaments, fixed deposit receipts and one safe deposit locker with Punjab National Bank, Industrial Estate Branch, Kota came to be seized by the investigating agency on 20.12.2004. As the petitioner wanted his documents and ornaments back, he filed an application before the learned Special

Judge under Section 451/457 for getting back the seized articles. The said application came to be rejected vide order dated 25.4.2005 by the learned Special Judge, which has given rise to the present petition.

4. Mr. Nigam Shukla, learned advocate for respondent no.2-CBI, Gandhinagar, upon instructions received from Anil Shridharan, PI, CBI, Gandhinagar, who is investigating the case, registered vide CR No. I-26A/2004 and who is personally present in the Court, states that the articles mentioned in schedule 1, 2 and 3 of the application has been seized from the petitioner for investigation, for commission of the alleged offence under Section 13(1)(e) of the Act. During the course of investigation, it is found that the said property is not disproportionate to the known source of income of the petitioner, therefore the said property may be handed over to the petitioner as, no charge sheet is going to be filed against the petitioner for commission of the alleged offence under Section 13(1)(e) of the Act qua the property which is seized by the investigating agency.

5. This Court has considered the submissions advanced by Mr. Y.S.Lakhani, learned advocate of the petitioner, Mr. H.M.prachhak, learned APP for respondent no.1-State of Gujarat and the statement made by Mr. Nigam Shukla, learned advocate for respondent no.2-CBI.

6. There is no dispute that the FIR came to be lodged against the present petitioner vide CR No. I-26A/2004 at CBI Police Station, Gandhinagar for commission of the alleged offence mentioned in the said CR. During the course of investigation, property mentioned in schedule 1 2 and 3 came to be seized from the

petitioner. The property at schedule 1 is the fixed deposit receipts belonging to the petitioner and property at schedule 2 is the gold and silver ornaments which are lying at the safe deposit locker at Kota Branch of Punjab National Bank and the property mentioned at schedule 3 is the documents.

7. So far as the properties mentioned at schedule 2, i.e. gold and silver ornaments are concerned, the Bank has been intimated by the investigating officer not to allow operation of the safe deposit locker. Now the investigation qua the properties at schedule 1, 2 and 3 is over and during the course of investigation it is divulged that those properties mentioned at schedule 1, 2 and 3 are not disproportionate to the known source of income of the petitioner and therefore investigating agency is now no more interested in holding the said properties as investigating agency has also taken the decision not to file charge sheet for commission of the alleged offence under Section 13(1)(e) of the Act qua the said properties. For rest of the offence under IPC and Prevention of Corruption Act, on conclusion of the investigation, the investigating agency is going to file charge sheet against the petitioner. Therefore according to this Court, since the said property at schedule 1 is not disproportionate to the known sources of the income of the petitioner, the same is ordered to be released from the seizure made by the investigating agency, by directing the investigating officer to hand over the said property mentioned in schedule 1 and 3 to the petitioner and directing the Kota Branch of Punjab National Bank to permit the petitioner to operate the said safe deposit locker for the properties mentioned

in schedule 2.

8. For the foregoing reasons, the application partly succeeds and accordingly it is partly allowed. Order dated 25.4.2005 recorded below application exh.1 in CBI Criminal Misc. Application no. 41 of 2005 by the learned Special Judge, Court No.4 (Special) for CBI Cases at Navrangpura, Ahmedabad is hereby quashed and set aside, result of which is that application exh.1 in CBI Case No. 41 of 2005 is allowed and resultantly the investigating agency is directed to hand over the properties mentioned in schedule 1 and 3 of the application to the petitioner forthwith and also permit him to operate the safe deposit locker maintained by the petitioner in Kota Branch of Punjab National Bank for the properties mentioned in schedule 2. The investigating officer is accordingly directed to communicate this order to the Kota Branch of Punjab National Bank for permitting the petitioner to operate the said locker.

Rule is made absolute to the aforesaid extent. Direct service is permitted to the petitioner as well as respondent no.2.

(A.M.Kapadia,J)

Jayanti*